

Appendix 2

APPENDIX OF STATE LAWS

I. Claim One State Law

Either expressively or by implication, all states for which class certification is sought prohibit imposing unreimbursed business expenses on employees that bring their wages below the state minimum wage in any given week. The prohibition is implicit in all states that have a minimum wage law because it is a necessary part of the minimum wage requirement and because states generally follow the interpretations applied to the FLSA.

California (<i>express</i>)	Cal. Labor Code §224 Employers may not make deductions that “amount to a rebate or deduction from the standard wage arrived at by ... statute.”
Colorado (<i>express</i>)	Colo. Rev. Stat. §8-4-105(2) “Nothing in this section authorizes a deduction below the minimum wage applicable under the “Fair Labor Standards Act of 1938”, 29 U.S.C. sec. 201 et seq.”
Illinois (<i>express</i>)	56 IL ADC 300.700: “Nothing in this Subpart shall be construed to permit an employer to violate the provisions of the Minimum Wage Law (Ill. Rev. Stat. 1991, ch. 48, pars. 1001 et seq.) or the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 201 et seq.).”
Minnesota (<i>express</i>)	Minn. Stat. Ann. § 177.24: Deductions cannot erode the Minimum Wage unless they are for tools of the trade or vehicle that can be used outside the employment. Minn. Rules 5200.0090: “No deductions from the minimum wage for ... breakage or other damage, for cash shortages or losses resulting from omissions or other errors, ... bad checks, ... robbery, or fines for disciplinary purposes.”
New York (<i>express</i>)	12 NY ADC 142-2.10: “(b) The minimum wage shall not be reduced by expenses incurred by an employee in carrying out duties assigned by an employer.”
New Jersey	N.J.S.A. 34:11-56a4:

<i>(express)</i>	<p>“Every employer shall pay to each of his employees wages at a rate of not less than \$5.05 per hour as of April 1, 1992 and, after January 1, 1999 the federal minimum hourly wage rate set by section 6(a)(1) of the federal “Fair Labor Standards Act of 1938” (29 U.S.C. s.206(a)(1))”</p> <p>N.J.S.A. §34:11-4.4 (a): “No employer may withhold or divert any portion of an employee's wages unless: [list of reasons, none of which apply to the claims in this action.]”</p>
Washington <i>(express)</i>	<p>Wash. Admin. Code §296-126-028</p> <p>Allows an employer to make deductions from wages below the minimum wage only in limited circumstances, none of which apply to Roto-Rooter’s practices.</p>

Connecticut <i>(implicit)</i>	<p>C.G.S.A. § 31-60:</p> <p>“(a) Any employer who pays or agrees to pay to an employee less than the minimum fair wage or overtime wage shall be deemed in violation of the provisions of this part.”</p>
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Florida <i>implicit</i>	<p>West's F.S.A. § 448.110</p> <p>“(3) Effective May 2, 2005, employers shall pay employees a minimum wage at an hourly rate of \$6.15 for all hours worked in Florida. Only those individuals entitled to receive the federal minimum wage under the federal Fair Labor Standards Act and its implementing regulations shall be eligible to receive the state minimum wage pursuant to s. 24, Art. X of the State Constitution and this section. The provisions of ss. 213 and 214 of the federal Fair Labor Standards Act, [FN1] as interpreted by applicable federal regulations and implemented by the Secretary of Labor, are incorporated herein.”</p>
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Hawaii <i>implicit</i>	<p>HRS § 387-2</p> <p>“Except as provided in section 387-9 [“Special minimum wages for learners; apprentices; full-time students; paroled wards of Hawaii youth correctional facility; handicapped workers”] and this section, every employer shall pay to each employee employed by the employer, wages at the rate of not less than: [\$7.25 per hour beginning January 1, 2007].”</p>
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Indiana <i>implicit</i>	<p>Indiana Code §22-2-2-4</p> <p>“(h) Except as provided in subsections (c) [tip credit] and (j) [initial employment period for persons under 20 years of age] every employer employing at least two (2) employees during a work week shall, in any work week in which the employer is subject to this chapter, pay each of the employees in any work week beginning on or after June 30, 2007, wages of not less than the minimum wage payable under the federal Fair Labor Standards Act of 1938, as amended (29 U.S.C. 201 et seq.).”</p>
Missouri <i>implicit</i>	<p>V.A.M.S. 290.502</p> <p>“1. Except as may be otherwise provided pursuant to sections 290.500 to 290.530, effective January 1, 2007, every employer shall pay to each employee wages at the rate of \$6.50 per hour, or wages at the same rate or rates set under the provisions of federal law as the prevailing federal minimum wage applicable to those covered jobs in interstate commerce, whichever rate per hour is higher.”</p> <p>See, e.g., MO DOL Website Frequently Asked Questions at http://www.labor.mo.gov/DLS/WageAndHour/MinimumWage/faqs.asp (Deductions for the employer’s benefit cannot take an employee’s wages below the state hourly minimum wage rate.)</p>
Ohio <i>implicit</i>	<p>R.C. § 4111.02</p> <p>“Every employer, as defined in Section 34a of Article II, Ohio Constitution, shall pay each of the employer’s employees at a wage rate of not less than the wage rate specified in Section 34a of Article II, Ohio Constitution [currently \$7.30 per hour].”</p> <p>See, <i>Mitchell v. Abercrombie & Fitch, Co.</i>, 428 F.Supp.2d 725, 732 (S.D. Ohio 2006) (“Courts have uniformly held that Ohio’s wage and hour law should be interpreted in accordance with the FLSA.”)</p>

II. Claim Two State Law

Some states expressly define what constitutes hours of work. Those state law definitions, listed below, all include work that Roto-Rooter required Technicians to perform, including the turn-in function, attending mandatory meetings, and maintaining their vans and equipment. In states that have no statutory definition of what constitutes hours of work, the methods of determining time worked under the FLSA apply. *See, e.g.*, 3 Emp. Coord. Compensation § 20:195 (“The methods for determining time worked under the FLSA apply to the determination of time worked under ... state minimum wage and overtime pay laws.”)(internal citations omitted).

California <i>(express)</i>	CA Division Of Labor Standards Enforcement, Enforcement Policies And Interpretations Manual §46.1: “Under the basic definition set out in all of the IWC Orders, “Hours Worked” means the time during which an employee is subject to the control of any employer, and includes all of the time the employee is suffered or permitted to work, whether or not required to do so. (e.g., Order 1-2000, § 2.(H).)”
Colorado <i>(express)</i>	7 CO ADC 1103-1:2 “Time Worked: the time during which an employee is subject to the control of an employer, including all the time the employee is suffered or permitted to work whether or not required to do so.”
Connecticut <i>(express)</i>	C.G.S.A. § 31-76b “(2) (A) “Hours worked” include all time during which an employee is required by the employer to be on the employer's premises or to be on duty, or to be at the prescribed work place, and all time during which an employee is employed or permitted to work, whether or not required to do so”.
Illinois <i>(express)</i>	56 IL ADC 210.110 ““Hours worked” means all the time an employee is required to be on duty, or on the employer's premises, or at other prescribed places of work, and any additional time he or she is required or permitted to work for the employer.”
Minnesota <i>(express)</i>	MN ADC 5200.0120 “Subpart 1. General. The minimum wage must be paid for all hours worked. Hours worked include training time, call time, cleaning time,

	<p>waiting time, or any other time when the employee must be either on the premises of the employer or involved in the performance of duties in connection with his or her employment or must remain on the premises until work is prepared or available.”</p> <p>See also, <i>Sletten v. First Care Medical Services</i>, No. Civ. 98-2446 RLE, 2000 WL 1196199, 12 (D.Minn. Mar. 20, 2000) (“The Minnesota Fair Labor Standards Act requires that employees be paid overtime for hours worked in excess of 48. See, <i>Minnesota Statutes Section 177.25</i>. However, Minnesota has adopted the FSLA's definition of “hours worked.” See, <i>Minnesota Rules § 5200. 0120, Subpart 2</i>. As a consequence, we apply the same analysis, as appropriate under the FSLA, to the Plaintiffs' wage and hour claims under Minnesota law.”)</p>
New Jersey (<i>express</i>)	<p>NJ ADC 12:56-5.2:</p> <p>“(a) All the time the employee is required to be at his or her place of work or on duty shall be counted as hours worked”</p>
New York (<i>express</i>)	<p>12 NY ADC 142-2.1</p> <p>“(d) The minimum wage shall be paid for the time an employee is permitted to work, or is required to be available for work at a place prescribed by the employer”</p>
Washington (<i>express</i>)	<p>WA DOL Policy ES.C.2 (Jan. 2, 2002) (copy attached)</p> <p>“The department’s interpretation of “hours worked” means all work requested, suffered, permitted or allowed and includes travel time, training and meeting time, wait time, on-call time, preparatory and concluding time, and may include meal periods.”</p>
Florida (<i>implicit</i>)	<p>No statutory definition. <i>Nascembeni v. Quayside Place Partners</i>, 2010 WL 2351467 *3 fn 2 (S.D.Fla. 2010) (Florida minimum wage laws are interpreted consistent with the FLSA).</p>
Hawaii (<i>implicit</i>)	<p>No statutory definition, but see HRS § 387-1 (11) (looking to the FLSA for defining statutory terms.)</p>
Indiana	<p>No statutory definition.</p>

<i>(implicit)</i>	
Missouri <i>(implicit)</i>	No statutory definition, but the Missouri Administrative Code relies on the FLSA and supporting regulations for interpreting the Missouri Minimum Wage Law. 8 MO ADC 30-4.010
Ohio <i>(implicit)</i>	No statutory definition.

III. Claim Three State Law

Of the 12 states for which certification on the illegal deductions issue is sought, nine prohibit the deductions. The other three states prohibit deductions without express authorization.

California <i>(prohibited)</i>	<p>CA Labor Code §221: It shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee.</p> <p>See, <i>Hudgins v. Neiman Marcus Group, Inc.</i>, 34 Cal.App.4th 1109, 1118-1119, 41 Cal.Rptr.2d 46, 51 - 52 (Cal.App. 1 Dist.,1995) (§221 prohibits “deductions from an employee's wages for cash shortages, breakage, loss of equipment, and other business losses that may result from the employee's simple negligence.”)</p> <p>CA Labor Code § 2802: (a) An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.</p> <p>CA IWC Wage Order 4 (8) Cash Shortage and Breakage No employer shall make any deduction from the wage or require any reimbursement from an employee for any cash shortage, breakage, or loss of equipment, unless it can be shown that the shortage, breakage, or loss is caused by a dishonest or willful act, or by the gross negligence of the employee.</p>
Colorado <i>(prohibited)</i>	<p>Colo. Rev. Stat. §8-4-105(1): (1) No employer shall make a deduction from the wages or compensation of an employee except as follows: [does not include deductions for warranty work or negligence]</p>
Connecticut <i>(prohibited)</i>	<p>Conn. Gen. Sate. §31-71e: Prohibits withholding or diverting wages unless authorized on a form approved by the Commissioner. The form approved by the Commissioner restricts the types of deductions allowed. The deductions in this case are not covered by the list. See, http://www.ctdol.state.ct.us/wgwkstnd/forms/paydeduct1.htm</p> <p>Conn. Gen. Sate. §31-73: Refund of wages as a condition of employment is illegal</p>

Hawaii <i>(prohibited)</i>	HI Rev. Stat. §388-6: No employer may deduct ... any part or portion of any compensation earned by any employee except where authorized in writing by the employee, provided that the following may not be so authorized, or required to be borne by the employee: (3) Fines, penalties, or replacement costs for breakage; (4) Losses due to acceptance by an employee of checks which are subsequently dishonored if employee is given discretion to accept or reject any check; (5) Losses due to defective or faulty workmanship, lost or stolen property, damage to property, default of customer credit, or nonpayment for goods or services received by customer if such losses are not attributable to employee's wilful or intentional disregard of employer's interest; or
Illinois <i>(Authorization required)</i>	820 IL Comp. Stat. 115/9: § 9. Except as hereinafter provided, deductions by employers from wages or final compensation are prohibited unless such deductions are ... (2) to the benefit of the employee; [or] (4) made with the express written consent of the employee, given freely at the time the deduction is made.
Indiana <i>(prohibited)</i>	Ind. Code §§ 22-2-6-1 & 2: Deductions limited to certain types, and then must be revocable by its terms: Sec. 1 Deductions are assignments Sec. 2. Assignments must be executed in writing by the employee and by its terms be revocable at any time by the employee. Assignments can only be for specific purposes, none of which apply here.
Minnesota <i>(Authorization required)</i>	Minn. Stat. Ann. § 181.79: Deductions require contemporaneous voluntary, written authorization
New Jersey <i>(prohibited)</i>	N.J.S.A. §34:11-4.4: No employer may withhold or divert any portion of an employee's wages unless: a. The employer is required or empowered to do so by New Jersey or

	<p>United States law; or</p> <p>b. The amounts withheld or diverted are for: List of deductions not applicable to those challenged in this case.</p>
<p>New York (<i>prohibited</i>)</p>	<p>NY Labor Law §193:</p> <p>1. No employer shall make any deduction from the wages of an employee, except deductions which:</p> <p>b. are expressly authorized in writing by the employee and are for the benefit of the employee; provided that such authorization is kept on file on the employer's premises. Such authorized deductions shall be limited to payments for insurance premiums, pension or health and welfare benefits, contributions to charitable organizations, payments for United States bonds, payments for dues or assessments to a labor organization, and similar payments for the benefit of the employee.</p> <p>2. No employer shall make any charge against wages, or require an employee to make any payment by separate transaction unless such charge or payment is permitted as a deduction from wages under the provisions of subdivision one of this section.</p> <p>NY LL §198-b: “Kick-back” of wages prohibited</p>
<p>North Carolina (<i>Authorization required</i>)</p>	<p>NC Gen Stat §95-25.8:</p> <p>Requires a written authorization:</p> <p>(a) A deduction [from wages] for a known amount requires a written authorization from the employee ... “which (i) is signed on or before the payday(s) for the pay period(s) from which the deduction is to be made; (ii) indicates the reason for the deduction; and (iii) states the actual dollar amount or percentage of wages which shall be deducted from one or more paychecks.</p>
<p>Ohio (<i>prohibited</i>)</p>	<p>Ohio Rev. Code Ann. §§4113.15</p> <p>“Employee authorized deduction” includes but is not limited to deductions for the purpose of: (a) purchase of United States savings bonds or corporate stocks or bonds, (b) a charitable contribution, (c) credit union savings or other regular savings program, or (d) repayment of a loan or other obligation.</p> <p>Ohio Rev. Code Ann. 4113.19: Deductions for breakage or damage require an express contract with the employee.</p>

Washington <i>(prohibited)</i>	Wash. Rev. Code §49.52.060 <u>A</u> llows deductions with an “expressly authorized writing in advance by the employee [if] for a lawful purpose accruing to the benefit of such employee ... : PROVIDED, That the employer derives no financial benefit from such deduction and the same is openly, clearly and in due course recorded in the employer's books.
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